

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Verizon Wireless Petition for)	
Waiver of Section 64.402 of the)	WT Docket No. 01-320
Commission's Rules)	
)	
)	

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association ("CTIA"),¹ pursuant to the Public Notice released November 14, 2001,² hereby submits its comments in support of the waiver request filed by Verizon Wireless ("Verizon").³ Verizon has requested a waiver of section 64.402 of the Commission's rules to allow it to implement a priority access service ("PAS") requested by the federal government to meet its immediate needs.

Verizon's request satisfies the criteria for waivers under Section 1.925 of the Commission's rules. Consistent with the National Communications System's ("NCS") determination that "any wireless priority access service that can be currently offered must

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² *Public Notice*, "Wireless Telecommunications Bureau Seeks Comment on a Petition for Waiver of the Commission's Part 64 Priority Access Service Rules, WT Docket No. 01-320, DA 01-2660 (rel. Nov. 14, 2001).

³ Verizon Wireless' Petition for Waiver of the Commission's Part 64 Priority Access Service Rules, WT Docket No. 01-320 (Nov. 2, 2001) ("Verizon Petition").

utilize technology that does not permit full compliance with the existing Commission rules,” the Commission should grant Verizon’s request for a waiver to provide immediate PAS.⁴ Furthermore, the Commission should use this waiver request as an opportunity to establish that an agreement entered into between NCS and any licensed Commercial Mobile Radio Service (“CMRS”) carrier for the provision of PAS is *prima facie* lawful and does not require an additional waiver from the Commission.

DISCUSSION

The Commission adopted PAS rules for CMRS carriers based on the specific recommendations of the NCS, which is the expert agency with respect to the federal government’s requirements for priority access.⁵ The Commission’s rules allow authorized national security and emergency preparedness (“NSEP”) users to gain access to the next available wireless channel without preempting calls already in progress, and establish five distinct levels of priority access based on the definitions proposed by NCS. CMRS providers that choose to offer PAS must follow the policies and procedures set forth in Part 64, Appendix B.⁶ Verizon has filed a petition for waiver of Section 64.402

⁴ See National Communications System’s Statement in Support of Petition for Waiver, WT Docket No. 01-320 (Nov. 2, 2001) (“NCS’s Statement”), Declaration of Mr. Brenton C. Greene at 1-2.

⁵ *Second Report and Order*, WT Docket No. 96-86 (2000) (“PAS Order”) at ¶¶

⁶ 47 C.F.R. § 64.402 and Part 64, Appendix B.

of the Commission's rules to allow it to offer immediate PAS by December 10, 2001 for the Washington, D.C., New York City, and Salt Lake City metropolitan areas.⁷

Verizon's request for a waiver to deploy a technical solution, referred to as the "Emergency Services Capability," and an alternative technical solution, referred to as "Access Channel Persistence," clearly satisfies the Commission's waiver standard.⁸ As Verizon explains in its petition, neither solution meets all of the requirements of Section 64.402 because the technology is not yet available in network equipment and wireless handsets.

In addition, Verizon has asked the Commission to grant protection from liability so long as it provides Immediate Service PAS "to authorized NSEP users pursuant to contract with the National Communications System or its service integrator, or otherwise approved by the National Communications System."⁹ CTIA agrees with Verizon that the Commission should extend the protection of the PAS order to limit the liability of any

⁷ On October 26, 2001, Verizon was selected by the Office of Manager of the National Communications System ("OMNCS") and its service integrator, DynCorp, to be the Immediate Service PAS provider. OMNCS and DynCorp, in conjunction with the White House, had previously released a request for proposal on October 10, 2001.

⁸ See Verizon Petition at 3-4.

⁹ The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements for Priority Access Service, *Second Report and Order*, WT Docket No. 96-86 (2000) ("PAS Order") at ¶¶22-24.

carrier providing PAS service pursuant to an agreement with NCS.

The original NCS petition set forth very specific requirements for wireless PAS; and the Commission relied on the NCS requirements when it adopted the PAS rules for CMRS carriers just last year. Whatever plans NCS may have had for the phased-in deployment of wireless PAS service were dramatically changed by the September 11, 2001, terrorist attacks, and the Nation's immediate needs for this service. NCS is clearly the expert agency with regard to NSEP user needs, and the FCC should defer to their judgment concerning the immediate and subsequent PAS requirements in the new environment. Accordingly, the Commission should use this waiver request as an opportunity to establish that an agreement entered into between NCS and any licensed Commercial Mobile Radio Service ("CMRS") carrier for the provision of PAS is *prima facie* lawful and does not require an additional waiver from the Commission.

CONCLUSION

For the reasons set forth above, the Commission should grant Verizon's waiver request, and in addition, establish that an agreement entered into between NCS and any licensed Commercial Mobile Radio Service ("CMRS") carrier for the provision of PAS is *prima facie* lawful and does not require an additional waiver from the Commission.

Respectfully submitted,

Michael Altschul

**CELLULAR TELECOMMUNICATIONS
& INTERNET ASSOCIATION**

1250 Connecticut Ave., N.W., Suite 800
Washington, D.C. 20036
(202) 785-0081

Michael F. Altschul
Senior Vice President & General Counsel

Sarah E. Leeper
Staff Counsel

November 21, 2001